



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

**December 20, 1965**

Mr. Edmund Tobola, President  
State Board of Barber Examiners  
Austin, Texas

Opinion No. C-570

Re: Whether the State Board of Barber Examiners have the authority under Section 11, Article 734a of Vernon's Penal Code, in light of subsequent amendments to Article 734a, to require all applicants for enrollment in barber schools to appear before the Board to determine their "educational fitness" prior to enrollment in a barber school and the issuance of a student permit and/or certificate.

Dear Mr. Tobola:

In your letter of November 3, 1965, to this office, you request our opinion as to whether the 1961 amendment of Section 9 of Article 734a, Vernon's Penal Code, supersedes the provisions of Section 11 of Article 734a authorizing the State Board of Barber Examiners to conduct an examination of applicants prior to their enrollment in barber schools to determine their educational fitness.

In answering your question, we look to the provisions of Section 11 and to the provisions of Section 9, as amended in 1961, of Article 734a. We note that Section 11 of Article 734a has not been amended since its enactment by the Legislature in 1929. Section 11 of Article 734a provides and we quote as follows:

"Sec. 11. The Board shall conduct examination of applicants for certificates of registration to practice as registered barbers and of applicants

for certificates of registration to practice as registered assistant barbers and of applicants to enter barber schools to determine their educational fitness, not less than four times each year, at such times and places as the Board may determine and designate. . . ." (Emphasis added)

Section 9 of Article 734a was amended in 1961 to read and we quote in part as follows:

"Sec. 9. (a) . . . and no certificate or permit shall be issued as provided for herein to an applicant to be a student in such a school or college unless said applicant demonstrates his or her ability to read intelligently and write clearly the English language determined by an examination conducted by the school or college." (Emphasis added)

Upon examination of the above quoted provisions, there obviously exists a conflict as to who shall conduct the educational fitness examination of applicants to be students. Section 11 of Article 734a authorizes the Board of Barber Examiners to conduct this examination and Section 9 (a) of Article 734a authorizes the barber school or college to conduct such examination.

To resolve this conflict, we are of the opinion that you must look to the intent of the Legislature when it amended Section 9 of Article 734a. By amending Section 9 of Article 734a in such a way as to be conflicting, inconsistent, and repugnant with Section 11 of Article 734a, evidences an intent; in our opinion, that the Legislature intended that Section 11 of Article 734a be repealed insofar as it is in conflict with Section 9 (a). First National Bank v. Lee County Cotton Oil Co., 250 S.W. 313, (Tex.Civ.App. 1923), affirmed First National Bank of Giddings v. Lee County Cotton Oil Co., 274 S.W. 127, (Comm.App. 1925).

Although the Legislature did not expressly repeal Section 11 of Article 734a when it amended Section 9 of such Article in 1961, we are of the opinion that Section 9 (a) does repeal Section 11 by implication, insofar as the provisions of

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these sections are in conflict. The doctrine of implied repeal rests on the principle that the last expression of the law-makers will be given effect. 53 Tex.Jur.2d 149, Statutes, Sec. 101. To the extent that Section 11 of Article 734a is inconsistent, repugnant, and in conflict with Section 9 (a) of Article 734a, it is repealed by necessary implication. State ex rel. Martin v. City of Waxahachie, 248 S.W.2d 971 (Tex.Civ. App. 1952, no history).

Since we are of the opinion that the provisions of Section 11 of Article 734a are repealed by implication insofar as they conflict with Section 9 (a) of Article 734a, you are respectfully advised that the Board of Barber Examiners has no authority to require applicants for enrollment in barber schools or colleges to appear before the Board to determine their "educational fitness" prior to enrollment in such barber schools or colleges.

SUMMARY

Section 11 and Section 9 (a) of Article 734a, Vernon's Penal Code, are in conflict, and to the extent that Section 11 conflicts with Section 9 (a), it is repealed by necessary implication. Therefore, the Board of Barber Examiners is without authority to require applicants for enrollment in barber schools or colleges to appear before the Board to determine their "educational fitness" prior to enrollment in such barber schools or colleges.

Yours very truly,

WAGGONER CARR  
Attorney General

BY:   
Dean Arrington  
Assistant

DA:ra

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APPROVED:  
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL  
By: T. B. Wright